

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE)	
)	
v.)	Case No.: 0507024886
)	Cr.A. No.: S05-08-1174 thru
REBECCA R. RENTOUL)	S05-08-1176
)	
Defendant.)	

Date Submitted:	December 30, 2005
Date Decided:	April 6, 2006

Kyle Sargent, Esq.
Deputy Attorney General
Department of Justice
114 East Market Street
Georgetown, DE 19947
Attorney for the State

Eric G. Mooney, Esq.
11 South Race Street
Georgetown, DE 19947
Attorney for the Defendant

DECISION ON MOTION TO SUPPRESS

Rebecca R. Rentoul (“Defendant”) has filed a motion with this court to suppress from trial all evidence obtained after her stop at a sobriety checkpoint for charges of underage possession or consumption of alcohol, driving under the influence and no insurance card. The Defendant contends that the evidence obtained subsequent to her stop at the sobriety checkpoint should be suppressed because the seizure was not

reasonable under the Fourth Amendment to the United States Constitution.¹ For the reasons that follow, the Defendant's motion is denied.

FACTS

On or about July 23, 2005, the Defendant was stopped by the Delaware State Police at a sobriety checkpoint roadblock on State Route 23, in Millsboro, Sussex County, Delaware. As a result of her stop, the Defendant was charged with the following:

- (1) Underage Possession/Consumption of Alcohol;
- (2) Driving a Vehicle Under the Influence of Alcohol and/or Drugs;
and
- (3) Failure to Have Insurance Identification in Possession.

Prior to the start of her trial for these charges, the Defendant moved to have all evidence obtained as a result of her stop at the checkpoint suppressed, contending that procedural errors in the formation of the checkpoint preclude the use of the evidence as it violated her right to be free from unreasonable seizures under the Fourth Amendment of the United States Constitution. A hearing was held on the Defendant's motion where the following facts were established with respect to the procedure used to form and conduct the sobriety checkpoint at which the Defendant was stopped:

On or about July 13, 2005, Lieutenant Roger Willey of the Delaware State Police, Troop 7, made a written request by e-mail to Captain Barbara Conley, who was serving as the Delaware State Police Traffic Control Director, "to conduct a sobriety checkpoint

¹ The Fourth Amendment to the United States Constitution is a fundamental right made obligatory on the states by the Fourteenth Amendment to the United States Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961).

operation as part of the Office of Highway Safety ‘Checkpoint Strikeforce Initiative’” .

The request listed the date, time and grid location of the proposed checkpoint.

Additionally, Lieutenant Willey asked to be “advise[d] if the selected location currently meets the established criteria”.² Captain Conley responded to Lieutenant Willey’s request the same day by providing written approval for the sobriety checkpoint by e-mail ensuring that the location exceeded the criteria for alcohol-related crashes and alcohol-related arrests in each of the previous three years.

The sobriety checkpoint was conducted on July 23, 2005, and the Defendant was stopped and arrested as a result of it.

At the hearing for the Defendant’s motion to suppress, Lieutenant Willey testified on behalf of the State. Captain Conley was not available to testify for the State or to be cross-examined by the Defendant.

DECISION

Stopping a vehicle at a checkpoint constitutes a seizure under the Fourth Amendment to the United States Constitution, which prohibits “unreasonable” seizures. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990).³ In assessing the reasonableness of a sobriety checkpoint, the United States Supreme Court has articulated a test balancing the state’s interest in preventing injury and damage caused by drunk driving and the effectiveness of sobriety checkpoints in preventing those injuries versus

² The Office of Highway Safety and the Delaware State Police both have established written procedures governing sobriety checkpoints that are substantially similar. The Delaware State Police criteria for choosing a location are consideration of alcohol-related fatal accidents, alcohol-related accidents and areas with high DUI arrests. The Office of Highway Safety criteria are alcohol-related fatal crashes, alcohol-related personal injury or property damage crashes and areas with a high incidence of DUI arrests.

³ The Fourth Amendment analysis for the United States Constitution is also applicable to the comparable constitutional provisions in Article I, Section 6 of the Delaware Constitution.

the overall intrusion on individual privacy rights resulting from use of checkpoints. *Id.* at 449. In *Sitz*, the United States Supreme Court balanced these interests and held that the use of sobriety checkpoints is reasonable and is not a violation of the Fourth Amendment to the United States Constitution. *Id.* at 455.

Delaware Courts have also approved the use of sobriety checkpoints in Delaware when procedures are in existence to ensure that cars passing through checkpoints are stopped in a reasonably safe manner and that sufficient safeguards are in place limiting the discretion of law enforcement officers with respect to the location of each checkpoint and the stopping of vehicles. *Bradley v. State*, 2004 WL 1964980 (Del. Aug. 19, 2004). See also *State v. McDermott*, 1999 WL 1847364 (Del. Com. Pl. Apr. 30, 1999).

a. Office of Highway Safety (“OHS”) Procedures versus Delaware State Police (“DSP”) Procedures

The Defendant contends that there were procedural errors in the formation of the sobriety checkpoint set up by the Delaware State Police (“DSP”) in Millsboro, Delaware, the night of her arrest which makes the checkpoint’s implementation constitutionally inadequate. She contends that the fatal procedural flaw in the formation of the checkpoint was when Lieutenant Willey used DSP guidelines to locate and conduct a sobriety checkpoint that was authorized as part of an Office of Highway Safety (“OHS”) program. It is her contention that although the DSP may have sufficient guidelines to establish sobriety checkpoints on its own, the fact that it used its own guidelines versus OHS guidelines for an OHS program checkpoint is a fatal flaw. I reject the Defendant’s position in this regard.

It is clear from the record that the main purpose of OHS in its “Checkpoint Strikeforce Initiative” was the funding of sobriety checkpoints. There is no constitutional requirement that a law enforcement agency establishing a checkpoint must use OHS guidelines for OHS authorized checkpoints if the law enforcement agency’s guidelines are constitutionally sufficient in and of themselves. The only question needing to be answered to determine whether the establishment of a sobriety checkpoint meets constitutional scrutiny is whether the procedure meets the criteria discussed in *Bradley* and *McDermott*. I am convinced that the sobriety checkpoint that resulted in the Defendant’s arrest did satisfy these constitutional requirements. DSP’s normal sobriety checkpoint procedure was properly implemented and administered that night with respect to the set up of the checkpoint. Lieutenant Willey of DSP made a written request to Captain Barbara Conley, the DSP Traffic Control Director, pursuant to DSP policy, to conduct the checkpoint. This request listed the date, time and grid location of the proposed checkpoint and asked to be advised if the selected location met the established criteria. Captain Conley responded to Lieutenant Willey’s request the same day by e-mail providing written approval of the checkpoint and showing that the location exceeded the criteria for alcohol-related crashes and alcohol-related arrests in each of the previous three years.

b. The Confrontation Clause

Although during her argument the Defendant conceded that hearsay evidence is normally admissible in a suppression hearing, she contends that Captain Conley needed to be present in court for cross-examination purposes at her suppression hearing on issues

regarding the criteria used to establish the sobriety checkpoint at which she was arrested.⁴

The Defendant contends that Captain Conley's e-mail to Lieutenant Willey, which provided authority to conduct the sobriety checkpoint and included data to show that the location for the checkpoint exceeded the criteria for alcohol-related crashes and alcohol-related arrests in each of the previous three years, is inadmissible as evidence at her suppression hearing based on the Confrontation Clause analysis performed by the United States Supreme Court in its decision of *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). Without this evidence, the State is unable to lay a sufficient foundation to justify the establishment of the sobriety checkpoint resulting in the Defendant's arrest.

I find that the admission of Captain Conley's e-mail to Lieutenant Willey does not violate the Confrontation Clause of the Sixth Amendment to the United States Constitution under *Crawford*. *Crawford* held that, as a general rule, "[t]estimonial statements of witnesses absent from *trial* [can be] admitted only where the declarant is unavailable and only where the defendant has had a prior opportunity to cross-examine". *Id.* at 59 (emphasis added). This constitutional right provided to defendants to confront the witnesses against them does not extend to suppression hearings. It only applies to criminal trials. *Shockley v. State*, 269 A.2d 778, 781 (Del. 1970) (holding that confrontation of witnesses does not extend to immunity hearings); *State v. Williams*, 2005 Del. Super. LEXIS 203 at *3 (Del. Super. May 31, 2005) (distinguishing between trial

⁴ The Defendant also contends that the officer that supervised the checkpoint in question needs to be present for cross-examination for purposes regarding issues concerning whether the checkpoint was conducted in a manner sufficient to pass constitutional scrutiny. However, the supervising officer's testimony is not relevant with regards to the establishment of the checkpoint and its location. Therefore, his testimony is not needed for any issues concerned with the Defendant's motion to suppress her stop at the checkpoint due to procedural errors in the establishment of the checkpoint.

rights and other procedural matters, e.g., suppression hearings). Therefore, it does not apply to the instant hearing.

CONCLUSION

The procedures used to establish the sobriety checkpoint resulting in the Defendant's seizure on or about July 23, 2005, were reasonable and were not in violation of the Fourth Amendment to the United States Constitution. Therefore, the Defendant's motion to suppress all evidence obtained after her stop at the checkpoint is **DENIED**.

IT IS SO ORDERED THIS 6TH DAY OF APRIL, 2006.

CHARLES W. WELCH
JUDGE